IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants:	Luis Luciani Jr., et. al.	§	Confirmation No.:	3179
Serial No.:	10/729,676	§	Group Art Unit:	2151
Filed:	12/05/2003	§	Examiner:	John Walsh
For:	System for Establishing Hardware-Based Remote Console Sessions and Software-Based Remote Console Sessions	§	Docket No.:	200314489-1

APPEAL BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Date: August 13, 2008

Sir:

Appellants hereby submit this Appeal Brief in connection with the above-identified application. A Notice of Appeal was electronically filed on June 13, 2008.

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I. REAL PARTY IN INTEREST

The real party in interest is Hewlett-Packard Development Company, L.P. (HPDC), a Texas Limited Partnership, having its principal place of business in Houston, Texas. HPDC is a wholly owned affiliate of Hewlett-Packard Company (HPC). The Assignment from the inventors to HPDC was recorded on December 5, 2003, at Reel/Frame 014787/0060.

II. RELATED APPEALS AND INTERFERENCES

Appellants are unaware of any related appeals or interferences.

III. STATUS OF THE CLAIMS

Originally filed claims:	1-20.
Claim cancellations:	9-10.
Added claims:	None.
Presently pending claims:	1-8 and 11-20.
Presently appealed claims:	1-8 and 11-20.

IV. STATUS OF THE AMENDMENTS

On August 12, 2008, Appellants filed an Amendment after the Final Office Action to overcome an objection to claim 20 over a typographical error. This Appeal Brief assumes entry of that Amendment.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

Appellants' contribution generally is directed to methods and systems that are operable to selectively establish hardware-based remote console sessions **and** software-based remote console sessions (as opposed to systems that are able to establish just hardware-based remote console sessions but not software-based remote console sessions or just software-based remote console sessions but not hardware-based remote console sessions). *See, e.g.*, p. 9, ll. 16-21.

Claim 1 is directed to a system (100) that comprises a CPU (106); memory (118) coupled to the CPU, the memory storing programs (108, 110, 112, 128) executable by the CPU; and a system management processor (102) coupled to the CPU. Fig. 1; p. 3, l. 20 – p. 4, l. 10. The system management processor is operable selectively to establish hardware-based remote console sessions and software-based remote console sessions. *See, e.g.*, p. 9, ll. 16-21. *See also* p. 4, l. 19 – p. 6, l. 9.

Dependent claim 7 is directed to the system of claim 1. Claim 7 requires that when operating a hardware remote console the system management processor tracks changes in a video memory (124), analyzes the changes, compresses data describing the changes, and sends the compressed data to remote locations. Fig. 1; p. 4, l. 28 – p. 5, l. 3.

Claim 8 is directed to a system that comprises a host computer (100). Fig. 1. The host computer includes a CPU (106); memory (118) coupled to the CPU; and a system management processor (102) coupled to the CPU and memory. Fig. 1; p. 3, l. 20 – p. 4, l. 10. The system also comprises a remote computer (122) coupled to the system management processor by way of a communication network. *Id.* The remote computer accesses the host computer by way of the system management processor to initiate a remote console session. P. 4, ll. 16-18. The system management processor selectively switches between a software-based remote console session and a hardware-based remote console session. *See, e.g.*, p. 9, ll. 16-21. The remote computer further comprises a software-based remote console applet program (114) and a hardware-based remote console applet program (116). Fig. 1; p. 8, ll. 14-21. The

software-based remote console applet program supports the software-based remote console sessions and the hardware-based remote console applet program supports the hardware-based remote console sessions. *Id.* The hardware-based remote console applet program controls the software-based remote console applet program. P. 8, ll. 28-30.

Claim 15 is directed to a computer system (100) that comprises means for executing programs (106; Fig. 1; p. 3, ll. 26-27); means for storing programs for execution (118; Fig. 1; p. 3, l. 27) coupled to the means for executing; and means for providing remote console (102; Fig. 1; p. 3, l. 30) to the computer system coupled to the means for executing. Fig. 1; p. 3, l. 20 – p. 4, l. 10. The means for providing selectively establishes hardware-based remote console sessions and software-based remote console sessions. *See, e.g.*, p. 9, ll. 16-21. *See also* p. 4, l. 19 – p. 6, l. 9.

Dependent claim 20 is directed to the computer system of claim 15. Claim 20 requires that, when operating a hardware remote console, the means for providing tracks changes in a video memory (124; Fig. 1; p. 4, l. 30), analyzes the changes, compresses data describing the changes, and sends the compressed data to remote locations. Fig. 1; p. 4, l. 28 – p. 5, l. 3.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1-8 and 11-20 are anticipated under 35 U.S.C. § 102(b) by *Integrated Lights Out Technology: Enhancing the Manageability of Proliant Servers* (hereinafter "Publication").

VII. ARGUMENT

A. Summary of Publication

Publication teaches Integrated Lights Out (iLO), which comprises technology resident on a host server and which a remote user can use to remotely manage the server. Abstract. iLO is composed of hardware or firmware that monitors the host server. P. 3, para. 4. iLO enables a remote user to view the host server's console. Abstract. iLO resides in the host server and manages the server through any state: initial power-on testing, prior to OS-loading, during OS use, and during or after OS failure. Abstract.

Publication does not teach both hardware and software remote console sessions, and Publication most certainly does not teach or even suggest the capability to selectively switch between hardware and software remote console sessions, as required by the claims.

B. Rejections under 35 U.S.C. § 102(b)

1. Claims 1-6 and 15-19

Claims 1-6 and 15-19 stand rejected as allegedly anticipated by Publication. Appellants traverse this rejection. Claim 1 is representative of this group of claims. The grouping should not be construed to mean the patentability of any of the claims may be determined in later actions (*e.g.*, actions before a court) based on the groupings. Rather, the presumption of 35 USC § 282 shall apply to each of these claims individually.

a) General Argument in Preceding Response to Office Action

Claim 1 requires "wherein [a] system management processor is operable selectively to establish hardware-based remote console sessions and software-based remote console sessions." Publication fails to teach or even suggest such a limitation. Publication discloses hardware-based remote consoles. A disadvantage to hardware-based remote consoles is performance quality. To alleviate this problem, independent claim 1 describes a system that is able to selectively "establish hardware-based remote console sessions and software-based remote console sessions." Thus, unlike Publication, which teaches only

hardware remote consoles and fails to teach software remote consoles, claim 1 teaches selectively switching between hardware **and** software remote consoles.

In rejecting claim 1, the Examiner cited page 3, 4th paragraph of Publication as teaching both hardware and software remote consoles (*i.e.*, the mention of "hardware" and "firmware"). Appellants respectfully submit that the Examiner is mistaken. The sentence that includes the terms "hardware" and "firmware" states: "[Integrated Lights Out] is composed of hardware and firmware specifically designed to fully monitor its host server through any server state… ." This sentence merely teaches that the Integrated Lights Out chip contains both hardware and firmware that are used together to monitor the host server. There is no mention here or elsewhere of a "software remote console," as required by claim 1, and there most certainly is no mention of selectively switching between hardware and software remote consoles, as required by claim 1. Appellants' assertions are corroborated by the fact that the listing of "Integrated Lights Out Features" on page 4 of the Publication includes hardware-based remote consoles but completely omits software-based remote consoles.

b) Examiner's Rebuttal in Final Office Action

In the Final Office Action, the Examiner maintained his rejection and stated that because claim 1 recites "operable selectively to establish hardware-based remote console sessions and software-based remote console sessions," that "the claims are anticipated if only [a] hardware-based session is selected."

c) Appellants' Rebuttal

The Examiner appears to be confused by the claim language's grammar. When a system is recited as being operable to selectively establish a hardware-based remote console session **AND** a software-based remote console session, as is the system in claim 1, then the system is able to selectively establish **either one** of the sessions. In other words, what is being claimed is the system's innate **capability** to selectively switch between the sessions. A system like that in Publication which is able to select only one of the sessions (*i.e.*, a hardware session) does not have this dual capability that Appellants are claiming. Claim 1

does not use the word "or" when reciting hardware- and software-based remote console sessions; it uses the word "and." This word very clearly implies that the system can establish both types of sessions, and that the system can selectively establish one of these sessions at a time. Thus, Publication's system – which can establish only one session at all – falls short and fails to anticipate claim 1.

For at least these reasons, the Examiner erred in rejecting claim 1. Thus, Appellants respectfully ask the Board to reverse the Examiner's rejection of all claims in claim 1's group and set the claims for issue.

2. Claims 7 and 20

Claims 7 and 20 stand rejected as allegedly anticipated by Publication. Appellants traverse this rejection. Claim 7 is representative of this group of claims. The grouping should not be construed to mean the patentability of any of the claims may be determined in later actions (*e.g.*, actions before a court) based on the groupings. Rather, the presumption of 35 USC § 282 shall apply to each of these claims individually.

a) General Argument in Preceding Response to Office Action

Claim 7 is dependent on independent claim 1 and thus is patentable for at least the same reasons that claim 1 is patentable.

In addition, claim 7 requires "wherein when operating a hardware remote console the system management processor tracks changes in a video memory, analyzes the changes, compresses data describing the changes, and sends the compressed data to remote locations." The Examiner asserts that Publication discloses this limitation on p. 7, paragraph 1. Appellants respectfully submit that the Examiner is mistaken. This portion of Publication does discuss encoding, compressing and redirecting data, but the data is **text** data, not "changes in a video memory." Moreover, the data is not even analyzed for changes, as required by claim 7. Claim 7 is further patentable over Publication for these reasons.

b) Examiner's Rebuttal in Final Office Action

The Examiner rebuts that the claims have been given "the broadest reasonable interpretation" and "the claim does not set forth any particular type or format of data, only data, and thus does not disqualify even 'text' data."

c) Appellants' Rebuttal

Appellants are not arguing the "type or format of data." Appellants are arguing the fact that claim 7 explicitly requires the tracking of "changes in a video memory." Publication simply does not disclose this limitation, even if the Examiner uses the "broadest reasonable interpretation."

Further, the Examiner did not even address Appellants' argument that Publication's data is not analyzed for changes, as required by claim 7. Appellants reiterate this argument to the Board.

Based on the foregoing, Appellants respectfully submit that the rejections of the claims in this grouping be reversed and the claims set for issue.

3. Claims 8 and 11-14

Claims 8 and 11-14 stand rejected as allegedly anticipated by Publication. Appellants traverse this rejection. Claim 8 is representative of this group of claims. The grouping should not be construed to mean the patentability of any of the claims may be determined in later actions (*e.g.*, actions before a court) based on the groupings. Rather, the presumption of 35 USC § 282 shall apply to each of these claims individually.

a) General Argument in Previous Response to Office Action

Independent claim 8 requires "wherein the system management processor selectively switches between a software-based remote console session and a hardware-based remote console session." The Examiner asserts that Publication teaches this limitation on page 3, paragraph 4. However, as Appellants have already established, this portion of Publication fails to teach or suggest the limitation in question. The Examiner also asserts that Publication teaches this limitation on page 6 (the terms "virtual presence" and "remote console"). Appellants kindly submit that the Examiner is again mistaken. Any type of

"remote console," whether hardware-based or software-based, may establish a "virtual presence." Thus, the mere fact that Publication uses the term "virtual presence" does not mean that Publication teaches a "software-based remote console," as required by claim 8. Appellants' assertions are again corroborated by page 6, paragraph 5, which states, "[a] customer can use Integrated Lights-Out to view the managed server at any time through the seamless, **hardware-based**, text Remote Console" (emphasis added). Thus, although Publication does appear to mention the possibility of creating a "virtual presence" via a "hardware-based ... Remote Console," Publication does not teach the creation of a "virtual presence" via a software-based remote console, such as the software-based remote console required by claim 8.

Claim 8 is patentable for additional reasons. Specifically, claim 8 requires "wherein the remote computer further comprises a software-based remote console applet program and a hardware-based remote console applet program, the software-based remote console applet program supporting software-based remote console sessions and the hardware-based remote console applet program supporting hardware-based remote console sessions." On pp. 4-5 of the Office Action, the Examiner asserts that Publication discloses this limitation on p. 9, paragraph 3. Appellants respectfully submit that the Examiner is mistaken. This portion of Publication merely discloses a Virtual Media applet that provides data to the Integrated Lights-Out as requested. There appears to be no mention of the Virtual Media applet being used to support a software-based remote console or even a hardware-based remote console. Thus, not only does Publication fail to disclose software-based remote consoles as explained above, but Publication certainly fails to disclose a software-based remote console applet supporting software-based remote console sessions and a hardware-based remote console applet supporting hardware-based remote console sessions. Claim 8 is patentable over Publication for this additional reason.

Claim 8 is patentable for yet another reason. Claim 8 requires "wherein the hardware-based remote console applet program controls the software-based remote console applet program." On page 5 of the Office Action, the Examiner

asserts that Publication teaches this limitation on p. 11, paragraph 2. Appellants respectfully submit that the Examiner is mistaken. This portion of Publication only describes a firewall that protects the integrity of firmware. A firewall that protects the integrity of firmware is not the same as a hardware-based remote console applet program that controls a software-based remote console applet program, where the applets control hardware-based remote console sessions and software-based remote console sessions, respectively (as required by claim 8). Claim 8 is patentable for this additional reason.

b) Examiner's Rebuttal in Final Office Action

The Examiner offers an exceptionally succinct rebuttal by stating that "the claims have been given the broadest reasonable interpretation and the prior art reference anticipates the claims." No other explanation is given.

c) Appellants' Rebuttal

Appellants offered numerous arguments concerning claim 8, and the Examiner has failed to properly answer even one. Appellants can only assume that the Examiner did not rebut the Appellants' arguments because the Appellants' arguments are valid. Absent any argument from the Examiner, Appellants very respectfully ask the Board to reverse rejections against this grouping of claims and to set these claims for issue.

C. Provisional, Obviousness-Type Double Patenting Rejection

Claims 1-5, 8, 11 and 13-19 stand provisionally rejected as unpatentable over claims 7-12 of co-pending Application No. 10/728,465. Because this is a provisional rejection and neither the instant patent application nor the '465 patent application has been patented, Appellants choose not to address the provisional rejection at this time.

D. Conclusion

For at least the reasons stated above, Appellants respectfully submit that the Examiner erred in rejecting all pending claims. It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper,

such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required (including fees for net addition of claims) are hereby authorized to be charged to Hewlett-Packard Development Company's Deposit Account No. 08-2025.

Respectfully submitted,

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VIII. CLAIMS APPENDIX

1. (Original) A system comprising:

a CPU;

a memory coupled to the CPU, the memory storing programs executable by the CPU; and

a system management processor coupled to the CPU, wherein the system management processor is operable selectively to establish hardware-based remote console sessions and software-based remote console sessions.

2. (Original) The system of claim 1, wherein the programs executable by the CPU support software-based remote console sessions.

3. (Original) The system of claim 2, wherein the programs executable by the CPU enable data transfer between the system and the system management processor.

4. (Original) The system of claim 1, wherein the system management processor comprises an application-specific integrated circuit.

5. (Original) The system of claim 4, wherein the system management processor supports hardware-based remote console sessions and software-based remote console sessions.

6. (Original) The system of claim 1, wherein the system management processor is powered independently from the system.

7. (Original) The system of claim 1, wherein when operating a hardware remote console the system management processor tracks changes in a video memory, analyzes the changes, compresses data describing the changes, and sends the compressed data to remote locations.

8. (Previously presented) A system comprising:

a host computer comprising:

a CPU;

a memory coupled to the CPU; and

a system management processor coupled to the CPU and memory;

a remote computer coupled to the system management processor by way of a communication network;

wherein the remote computer accesses the host computer by way of the system management processor to initiate a remote console session;

wherein the system management processor selectively switches between a software-based remote console session and a hardware-based remote console session;

wherein the remote computer further comprises a software-based remote console applet program and a hardware-based remote console applet program, the software-based remote console applet program supporting software-based remote console sessions and the hardware-based remote console applet program supporting hardware-based remote console sessions; and

wherein the hardware-based remote console applet program controls the software-based remote console applet program.

9.-10. (Canceled).

11. (Previously presented) The system of claim 8, wherein the system management processor controls the hardware-based remote console applet program and the software-based remote console applet program.

12. (Original) The system of claim 8, wherein the system management processor is powered separately from the system.

13. (Original) The system of claim 8, wherein the memory comprises programs executable by the CPU, the programs supporting software-based remote console sessions.

14. (Original) The system of claim 13, wherein the programs enable communications between the CPU and the system management processor.

15. (Original) A computer system, comprising:

a means for executing programs;

a means for storing programs for execution coupled to the means for executing; and

a means for providing remote console to the computer system coupled to the means for executing;

wherein the means for providing selectively establishes hardware-based remote console sessions and software-based remote console sessions.

16. (Original) The computer system of claim 15, wherein the means for storing further comprises programs for execution that support software-based remote console sessions.

17. (Original) The computer system of claim 16, wherein the programs for execution facilitate communications between the computer system and the means for providing.

18. (Original) The computer system of claim 15, wherein the means for providing comprises:

an application-specific integrated circuit, the application-specific integrated circuit comprising a microcontroller; and

a memory coupled to the application-specific integrated circuit.

19. (Original) The computer system of claim 18, wherein the memory is used for communication between the means for providing and the computer system.

20. (Previously presented) The computer system of claim 15, wherein when operating a hardware remote console the means for providing tracks changes in a video memory, analyzes the changes, compresses data describing the changes, and sends the compressed data to remote locations.

IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

None.